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DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-EIGHTH SESSION

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STATE RESPONSIBILITY

A. Introduction

1. At its first session, in 1949, the Commission selected State responsibility among the topics which it considered suitable for codification. In response to General Assembly resolution 799 (VIII) of 7 December 1953 requesting the Commission to undertake, as soon as it considered it advisable, the codification of the principles of international law concerning State responsibility, the Commission, at its seventh session in 1955, decided to begin the study of State responsibility and appointed F.V. Garcia Amador as Special Rapporteur for the topic. At the next six sessions of the Commission, from 1956 to 1961, the Special Rapporteur presented six successive reports, dealing on the whole with the question of responsibility for injuries to the persons or property of aliens. 1/

1/ Yearbook ... 1969, vol. II, p. 229.

2. The Commission at its fourteenth session in 1962 set up a Sub-Committee whose task was to prepare a preliminary report containing suggestions concerning the scope and approach of the future study. 2/

3. At its fifteenth session in 1963, the Commission, after having unanimously approved the report of the Sub-Committee, appointed Mr. Roberto Ago as Special Rapporteur for the topic.

4. The Commission, from its twenty-first (1969) to its thirty-first sessions (1979) received eight reports from the Special Rapporteur. 3/

5. The general plan adopted by the Commission at its twenty-seventh session, in 1975, for the draft articles on the topic "State responsibility" envisaged the structure of the draft articles as follows: Part One would concern the origin of international responsibility; Part Two would concern the content, forms and degrees of international responsibility; and a possible Part Three, which the Commission might decide to include, could concern the question of the settlement of disputes and the implementation of international responsibility. 4/

6. The Commission at its thirty-second session, in 1980, provisionally adopted on first reading Part One of the draft articles, concerning "the origin of international responsibility". 5/

7. At its thirty-first session (1979), the Commission, in view of the election of Mr. Ago as a Judge to the International Court of Justice, appointed Mr. Willem Riphagen Special Rapporteur for the topic.

2/ Ibid., p. 229 et seq.

3/ For the eight reports of the Special Rapporteur see: Yearbook ... 1969, vol. II, doc. A/CN.4/217 and Add.1, pp. 125-156. Yearbook ... 1970, vol. II, doc. A/CN.4/233, pp. 177-198. Yearbook ... 1971, vol. II, (Part One), doc. A/CN.4/246 and Adds. 1-3, p. 199. Yearbook ... 1972, vol. II, doc. A/CN.4/264 and Add.1, p. 71. Yearbook ... 1976, vol. II, (Part One), doc. A/CN.4/291 and Add.1 and 2 pp. 3-55. Yearbook ... 1977, vol. II (Part One), doc. A/CN.4/302 and Add.1-3. Yearbook ... 1978, vol. II (Part One), doc. A/CN.4/318 and Add.1-4 and 1980, doc. A/CN.4/318/Add.5-7).

4/ Yearbook ... 1975, vol. II, pp. 55-59, doc. A/10010/Rev.1, paras. 38-51.

5/ Yearbook ... 1980, vol. II (Part Two), pp. 26-63, doc. A/35/10, chap. III.

8. The Commission, from its thirty-second (1980) to its thirty-eighth sessions (1986), received seven reports from Mr. Willem Riphagen, 6/ for Parts Two and Three of the topic. 7/

9. At its thirty-ninth session in 1987 the Commission appointed Mr. Gaetano Arangio-Ruiz as Special Rapporteur to succeed Mr. Willem Riphagen, whose term of office as a Member of the Commission expired on 31 December 1984. The Commission, from its fortieth (1988) to its forty-eighth (1996) sessions, received eight reports 8/ from Mr. Gaetano Arangio-Ruiz. 9/

6/ For the seven reports of the Special Rapporteur, see
Yearbook ... 1980, vol. II (Part One), p. 107, doc. A/CN.4/330;
Yearbook ... 1981, vol. II (Part One), p. 79, doc. A/CN.4/334;
Yearbook ... 1982, vol. II (Part One), p. 22, doc. A/CN.4/354;
Yearbook ... 1983, vol. II (Part One), p. 3, doc. A/CN.4/366; and Add.1;
Yearbook ... 1984; vol. II (Part One), p. 1, doc. A/CN.4/380;
Yearbook ... 1985, vol. II (Part One), p. 3, doc. A/CN.4/389; and
Yearbook ... 1986, vol. II (Part One), p. 1, doc. A/CN.4/397; and Add.1.

7/ At its thirty-fourth session (1983) the Commission referred draft articles 1 to 6 of Part Two to the Drafting Committee. At its thirty-seventh session (1985) the Commission decided to refer articles 7 to 16 of Part Two to the Drafting Committee. At its thirty-eighth session (1986) the Commission decided to refer draft articles 1 to 5 of Part Three and its annex to the Drafting Committee.

8/ For the eight reports of the Special Rapporteur, see
Yearbook ... 1986, vol. II (Part One), p. 6, doc. A/CN.4/416 and Add.1;
Yearbook ... 1990, vol. II (Part One), doc. A/CN.4/425 and Add.1;
Yearbook ... 1991, vol. II (Part One), doc. A/CN.4/440 and Add.1;
doc. A/CN.4/44 and Add.1-3; doc. A/CN.4/453 and Add.1 and Corr.1, 2, 3 and Add.2 and 3; doc. A/CN.4/461 and Add.1 and 2; doc. A/CN.4/469 and Corr.1 (English only) and Add.1 and 2 and A/CN.4/476 and Corr.1 (English only) and Add.1.

9/ At its forty-first session (1989) the Commission referred to the Drafting Committee draft articles 6 and 7 of Chapter Two (legal consequences deriving from an international delict) of Part Two of the draft articles. At its forty-second session (1990) the Commission referred draft articles 8, 9 and 10 of Part Two to the Drafting Committee. At its forty-fourth session (1992) the Commission referred to the Drafting Committee draft articles 11 to 14 and 5 bis for inclusion in Part Two of the draft articles. At its forty-fifth session (1993) the Commission referred to the Drafting Committee draft articles 1 to 6 of Part Three and Annex thereto. At its forty-seventh session (1995) the Commission referred to the Drafting Committee articles 15 to 20 of Part One dealing with the legal consequences of internationally wrongful acts characterized as crimes under article 19 of Part One of the draft articles and new draft article 7 on the settlement of disputes, to be included in Part Three of the draft.

10. At the conclusion of its forty-seventh session, the Commission had provisionally adopted for inclusion in Part Two, draft articles 1 to 5 10/ and articles 6 (Cessation of wrongful conduct), 6 bis (Reparation), 7 (Restitution in kind), 8 (Compensation), 10 (Satisfaction), 10 bis (Guarantees of non-repetition), 11/ 11 (Countermeasures) by an injured State), 13 (Proportionality) and 14 (Prohibited countermeasures). 12/ It had furthermore received from the Drafting Committee a text for article 12 (Conditions relating to resort to countermeasures), on which it deferred action. 13/ At its forty-seventh session the Commission had also provisionally adopted for inclusion in Part Three, article 1 (Negotiation), article 2 (Good offices and mediation), article 3 (Conciliation), article 4 (Task of the Conciliation Commission), article 5 (arbitration), article 6 (Terms of reference of the Arbitral Tribunal), article 7 (Validity of an arbitral award) and Annex, article 1 (The Conciliation Commission) and article 2 (The Arbitral Tribunal).

10/ For the text of articles 1 to 5 (para. 1), with commentaries, see Yearbook ... 1985, vol. II (Part Two), pp. 24 et seq.

11/ For the text of article 5, para. 2 and articles 6, 6 bis, 7, 8, 10 and 10 bis, with commentaries, see Official Records of the General Assembly, Forty-eighth Session, Supplement No. 10 (A/48/10), pp. 132 et seq.

12/ For the text of articles 11, 13 and 14, see ibid., Forty-ninth session, Supplement No. 10 (A/49/10), footnote 362. Article 11 was adopted by the Commission on the understanding that it might have to be reviewed in the light of the text that would eventually be adopted for article 12 (see ibid., para. 352).

13/ See ibid., para. 352.